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Policy arguments against Labor's proposed \$3,000 cap on deductions for managing tax affairs

The below letter outlines the main policy arguments against Labor's proposed \$3,000 cap on deductions for managing tax affairs that CAs in public practice can adapt and send to their clients under their letterhead.

Please contact the CA ANZ Tax Team via TaxTeamAU@charteredaccountantsanz.com with any questions.

Labor's proposed \$3,000 cap on the deduction claimable for managing your tax affairs

As your accountant and tax adviser, we strongly oppose the proposal by the Australian Labor Party to cap at \$3,000 the annual tax deduction Australians can claim for the cost of managing their tax affairs.

Labor portrays the deduction as a “rort” and a “tax subsidy” for wealthy Australians, notwithstanding that the previous Labor Government’s review of the tax system (Australia’s Future tax System Review) and a more recent Parliamentary inquiry into certain personal tax expenses both accepted the principle of tax deductibility for the costs of managing an individual’s tax affairs.

The deduction entitlement is yours, not ours. We think it needs protecting.

What was the original justification for Labor's policy?

In his 2017 Budget Reply Speech as Opposition Leader, Mr Shorten said the cap was necessary because:

“In 2014-15, forty-eight Australians earned more than one million dollars and paid no tax at all. Not even the Medicare levy. Instead, using clever tax lawyers, they deducted their income down from an average of nearly \$2.5 million...to below the tax-free threshold.

One of the biggest deductions claimed was the money they paid to their accountants - averaging over one million dollars.

These individuals are not just counting cards in the casino – they are bringing their own dealer and their own deck.

Loopholes for millionaires means middle Australia pays more.

That's why a Labor Government will cap the amount individuals can deduct for the management of their tax affairs at \$3,000.

This affects fewer than 1 in 100 taxpayers and will save the budget \$1.3 billion over the medium-term.”

Let's set the record straight...

Labor's proposed \$3,000 cap:

- **Could apply to any Australian *regardless of wealth*.**
- **For all types of costs** currently claimable as a deduction, such as:
 - preparing and lodging your tax return and activity statements
 - dealing with the Australian Taxation Office (ATO) on your behalf (e.g. in an audit of your tax affairs, obtaining a private ruling)
 - travel costs associated with obtaining tax advice (e.g. to attend a meeting)
 - litigation costs on a tax matter
 - obtaining a valuation for tax purposes
 - any interest charges the ATO imposes on you (e.g. for late payment of tax)

Who are these millionaires the Opposition Leader talks about?

Feedback received from the ATO is that these big deduction claims relate to long-running tax disputes with large litigation costs and ATO-imposed interest costs.

If the ATO didn't consider these deductions to be legitimate, then the deductions would have been challenged.

The Opposition Leader's rhetoric implies there are wealthy Australians who willingly hand money to their tax adviser simply to get a tax deduction.

We are yet to meet a client who thinks this way.

How a \$3,000 cap can cause hardship and put individuals at a disadvantage

Labor is banking on the fact that most Australians don't usually get charged anything near \$3,000 by their tax adviser. Politically this is considered to be a low risk strategy.

But Labor's proposal fails to acknowledge that sometimes the cost of managing an individual's tax affairs can easily cost more than \$3,000, especially in situations when you *really* need a tax professional in your corner.

Here are common situations where fees can easily exceed \$3,000...

- Your tax affairs are investigated by the ATO
- Your tax affairs are complex, and a binding private ruling is sought from the ATO
- You fall behind in your tax lodgement or tax payment obligations, requiring the preparation of multiple prior year tax returns or negotiations with the ATO for a tax payment plan and remission of penalties and late payment interest
- Your investments or business arrangements give rise to complex tax calculations.
- Your tax records have been destroyed, misplaced or are incomplete, requiring a search for replacement records which meet ATO requirements
- You have income or assets from overseas and your tax issues are multi-jurisdictional and more complex
- You plan to start a business, sell a business or devise a strategy for passing on a business to others
- You have (or plan to establish) a self-managed superannuation fund (SMSF)
- You need help with issues relating to your membership and entitlements in an SMSF or a retail, industry or public sector superannuation fund
- Your accountant works with your legal adviser to:
 - design a will which doesn't result in onerous tax outcomes for your family,
 - distribute assets or income to family members during your lifetime,
 - establish and operate a partnership, trust or company, or
 - protect your assets from claims by others.

There are also what we call "life events" which often give rise to tax complexity. These include relationship breakdown and death.

Professional fees are a legitimate deduction entitlement for all Australians

Labor's proposed \$3,000 cap ignores the fact that Australia's income tax system:

- Is **complex** and Labor's tax policies will add further complexity. A large part of our work involves helping clients navigate this tax labyrinth, keeping them out of trouble and helping them pay the tax legally owed, no more and no less.
- Makes it **compulsory** to lodge an annual income tax return.
- Puts the onus on the taxpayer to get their tax right (called "**self-assessment**").

That's why, from a policy perspective, tax adviser's fees have rightly been regarded as a **cost of complying with the tax law**.

Deductibility also helps Australians **afford professional advice** rather than relying on pub talk.

Labor ignores the policy foundation for the deduction and is wrong to describe the deduction as a "rort".

The relationship with the Australian Taxation Office

Labor's policy will also undermine the relationship Australians and tax professionals have with the ATO.

The ATO is an active agency and enjoys substantial government funding to go about its difficult, important tasks.

Australian tax law empowers the ATO to compel taxpayers to provide information and attend interviews. Sometimes, ATO investigations can become a drawn-out affair. Taxpayers do not control the costs involved in responding to the ATO.

In contrast to Labor's policy, the Commissioner of Taxation and senior ATO management regularly acknowledge the important role skilled, ethical tax advisers play in a well-functioning tax system.

Not every taxpayer can be investigated by the ATO, and with about 75% of Australians relying on tax agents to help them prepare and lodge their annual income tax return, the ATO understands the front-line role tax advisers play.

"Tax agents – the backbone of our tax system"

ATO Commissioner Chris Jordan, 14 March 2019

The deduction for professional tax help recognises the David v Goliath dynamics when a taxpayer is confronted by the might of the ATO. If a \$3,000 cap is put in place, our fear is that some Australians will become distrustful of the ATO, unfairly perceiving the tax regulator as a bully – a government agency able to throw its weight around knowing that Australians will receive no tax deduction once their adviser's fee exceeds \$3,000.

The Taxpayers' Charter

The ATO fully acknowledges in its Taxpayers' Charter the right of every Australian to be represented by a person of their choice who can advise on the operation of the tax law. The ALP policy would also undermine that right once the adviser's fees exceed \$3,000.

How is this a 'Fair Go' for Australians?

